



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98349; File No. SR-FINRA-2023-011]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.;**

**Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR-FINRA-2015-036**

September 11, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 29, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to extend, to May 22, 2024, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR-FINRA2015-036, other than the amendments pursuant to SR-FINRA-2015-036 that were implemented

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

on December 15, 2016. The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 6, 2015, FINRA filed with the Commission proposed rule change SR-FINRA-2015-036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced ("TBA") transactions, inclusive of adjustable rate mortgage ("ARM") transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations ("CMOs"), issued in conformity with a program of an agency or Government-Sponsored Enterprise ("GSE"), with forward settlement dates, as defined more fully in the filing (collectively, "Covered Agency Transactions"). The Commission approved SR-FINRA-2015-036 on June 15, 2016 (the "Approval Date").<sup>4</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR-FINRA-2015-036).

Pursuant to Partial Amendment No. 3 to SR-FINRA-2015-036, FINRA announced in Regulatory Notice 16-31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR-FINRA-2015-036 (collectively, the “risk limit determination requirements”), would become effective on December 15, 2016, six months from the Approval Date.<sup>5</sup>

Industry participants sought clarification regarding the implementation of the requirements pursuant to SR-FINRA-2015-036. Industry participants also requested additional time to make system changes necessary to comply with the requirements, including time to test the system changes, and requested additional time to update or amend margining agreements and related documentation. In response, FINRA made available a set of Frequently Asked Questions & Guidance<sup>6</sup> and, pursuant to SR-FINRA-2017-029,<sup>7</sup> extended the implementation date of the requirements of SR-FINRA-2015-036 to June 25, 2018, except for the risk limit determination requirements, which, as

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<sup>5</sup> See Partial Amendment No. 3 to SR-FINRA-2015-036 and Regulatory Notice 16-31 (August 2016), both available at: <[www.finra.org](http://www.finra.org)>.

<sup>6</sup> See Responses to Frequently Asked Questions Regarding Covered Agency Transactions Under FINRA Rule 4210, at: <<https://www.finra.org/rules-guidance/guidance/faqs/responses-frequently-asked-questions-regarding-covered-agency-transactions-under-finra-rule>>. Further, staff of the SEC’s Division of Trading and Markets made available a set of Frequently Asked Questions regarding Exchange Act Rule 15c3-1 and Rule 15c3-3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: <<https://www.finra.org/rules-guidance/guidance/faqs/responses-frequently-asked-questions-regarding-covered-agency-transactions-under-finra-rule>>.

<sup>7</sup> See Securities Exchange Act Release No. 81722 (September 26, 2017), 82 FR 45915 (October 2, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR-FINRA-2015-036; File No. SR-FINRA-2017-029); see also Regulatory Notice 17-28 (September 2017).

announced in Regulatory Notice 16-31, became effective on December 15, 2016.

Industry participants requested that FINRA reconsider the potential impact of certain requirements pursuant to SR-FINRA-2015-036 on smaller and mid-sized firms. Industry participants also requested that FINRA extend the implementation date pending such reconsideration. In response to these concerns, FINRA further extended the implementation date of the requirements of SR-FINRA-2015-036, other than the risk limit determination requirements, most recently to October 25, 2023 (the “October 25, 2023 implementation date”),<sup>8</sup> and, informed by extensive dialogue, both with industry participants and other regulators, including the staff of the SEC and the Federal Reserve System, FINRA proposed amendments to the requirements of SR-FINRA-2015-036 (the “Proposed Amendments”).<sup>9</sup>

The SEC approved the Proposed Amendments on July 27, 2023.<sup>10</sup> As FINRA

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<sup>8</sup> See Securities Exchange Act Release No. 97062 (March 7, 2023), 88 FR 15473 (March 13, 2023) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR-FINRA-2015-036; File No. SR-FINRA-2023-002).

<sup>9</sup> See Securities Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161 (May 25, 2021) (Notice of Filing of a Proposed Rule Change to Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR-FINRA-2015-036; File No. SR-FINRA-2021-010). See also Partial Amendment No. 1 to SR-FINRA-2021-010, and Letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated September 16, 2021, both available at: <www.finra.org>.

<sup>10</sup> See Securities Exchange Act Release No. 98003 (July 27, 2023), 88 FR 50205 (August 1, 2023) (Order Setting Aside Action by Delegated Authority and Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR-FINRA-2015-036; File No. SR-FINRA-2021-010) (the “SEC Approval Order”); see also Securities Exchange Act Release No. 94013 (January 20, 2022), 87 FR 4076 (January 26, 2022) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR-FINRA-2015-036; File No. SR-FINRA-2021-010).

stated in Partial Amendment No. 1 to SR-FINRA-2021-010, and consistent with the SEC Approval Order,<sup>11</sup> FINRA has issued Regulatory Notice 23-14<sup>12</sup> announcing May 22, 2024, as the implementation date of the Proposed Amendments (the “Amendments Implementation Date”). FINRA believes it is appropriate, in the interest of regulatory clarity, to adjust the implementation date of the requirements pursuant to SR-FINRA-2015-036 in alignment with the Amendments Implementation Date. To that end, FINRA is proposing to extend the October 25, 2023 implementation date to May 22, 2024. FINRA notes that the risk limit determination requirements pursuant to SR-FINRA-2015-036 became effective on December 15, 2016, and, as such, are not affected by the proposed rule change.<sup>13</sup>

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

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<sup>11</sup> FINRA stated, and the SEC noted, that the amendments would become effective between nine and ten months following the SEC’s approval. See Partial Amendment No. 1; see also SEC Approval Order, supra note 10, 88 FR 50205, 50229.

<sup>12</sup> Regulatory Notice 23-14 (August 2023), available at: <[www.finra.org](http://www.finra.org)>.

<sup>13</sup> The Proposed Amendments make certain revisions to the risk limit determination requirements as originally approved pursuant to SR-FINRA-2015-036. As announced in Regulatory Notice 23-14, these revisions will become effective on May 22, 2024, as with all the other amendments approved pursuant to the SEC Approval Order.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change serves the interest of regulatory clarity in the Covered Agency Transaction market by aligning the implementation of the requirements pursuant to SR-FINRA-2015-036, other than the risk limit determination requirements, with the Amendments Implementation Date. FINRA believes that this will thereby protect investors and the public interest by helping to promote stability in the Covered Agency Transaction market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that aligning the implementation date of the requirements pursuant to SR-FINRA-2015-036, other than the risk limit determination requirements, with the Amendments Implementation Date will help to provide clarity to industry participants and to promote stability in the Covered Agency Transaction market, thereby benefiting all parties.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed,

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-(f)(6)(iii),<sup>18</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated it believes that immediate operation of the proposed rule change is appropriate because alignment of the implementation date of the requirements pursuant to SR-FINRA-2015-036, other than the risk limit determination requirements, with the Amendments Implementation Date will help to promote stability in the Covered Agency Transaction market.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal to align the implementation date of the amendments to Rule 4210 pursuant to SR-FINRA-2015-036, other than the risk limit determination requirements, with the Amendments Implementation Date does not raise any new or novel issues and will reduce any potential uncertainty in the Covered Agency Transaction market. Therefore, the Commission

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2023-011 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2023-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

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<sup>19</sup> For purposes of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2023-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>20</sup> 17 CFR 200.30-3(a)(12).